

## Message Text

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ACTION EB-08

INFO OCT-01 EA-10 ISO-00 CAB-02 CIAE-00 COME-00  
DODE-00 DOTE-00 INR-07 NSAE-00 FAA-00 L-03 /031 W  
-----003918 170237Z /15

P 170111Z SEP 77

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC PRIORITY 1184

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E.O. 11652: N/A

TAGS: EAIR, JA

SUBJECT: CIVAIR: US/JAPAN AIRWORTHINESS AGREEMENT AND FAA  
SPECIAL REGULATION 26

REF: TOKYO STATE 216510

1. SUMMARY: MOFA HAS GIVEN EMBASSY GOJ'S PROPOSED COUNTER-DRAFT TO USG DRAFT OF 12/28/73 AND EXPRESSED THE "STRONG HOPE" THAT IT WILL BE ACCEPTABLE TO THE U.S. SIDE. PROPOSED CHANGES ARE, ACCORDING TO THE MOFA, MAINLY FOR SIMPLIFICATION AND CLARIFICATION OF THE TEXT ALTHOUGH A FEW OF THEM ARE SUBSTANTIVE. GOJ HAS SUGGESTED THAT EXCHANGE OF NOTES INCORPORATING THE NEW AGREEMENT TAKE PLACE IN WASHINGTON, HOPEFULLY BEFORE OCTOBER 1 WHEN SFAR 26 IS SCHEDULED TO EXPIRE. END SUMMARY.

2. GOJ'S PROPOSED COUNTER-DRAFT FOR A REVISED US/JAPAN AIRWORTHINESS AGREEMENT AND IMPLEMENTING NOTE READS AS FOLLOWS:

"EXCELLENCY, I HAVE THE HONOR TO REFER TO THE DISCUSSIONS WHICH HAVE TAKEN PLACE BETWEEN REPRESENTATIVES OF THE GOVERNMENT OF JAPAN AND OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA RELATING TO THE RECIPROCAL ACCEPTANCE OF AIRWORTHINESS CERTIFICATION. I HAVE

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FURTHER THE HONOR TO STATE THAT THE TWO GOVERNMENTS HAVE REACHED AN UNDERSTANDING AS SET OUT BELOW:

1. THIS UNDERSTANDING WILL APPLY TO CIVIL AERO-NAUTICAL PRODUCTS (HEREINAFTER REFERRED TO AS "PRODUCTS") AND CERTAIN COMPONENTS WHEN SUCH PRODUCTS OR COMPONENTS ARE PRODUCED IN ONE OF THE TWO STATES (HEREINAFTER REFERRED TO AS "THE EXPORTING STATE")

AND EXPORTED TO THE OTHER STATE (HEREINAFTER REFERRED TO AS "THE IMPORTING STATE"), AND TO THE PRODUCTS PRODUCED IN ANY THIRD STATE WITH THE GOVERNMENT OF WHICH BOTH OF THE GOVERNMENTS HAVE AGREEMENTS SIMILAR IN SCOPE FOR RECIPROCAL ACCEPTANCE OF AIRWORTHINESS CERTIFICATION (HEREINAFTER REFERRED TO AS "THIRD STATE") AND EXPORTED OR IMPORTED BETWEEN JAPAN AND THE UNITED STATES OF AMERICA.

2. IF THE COMPETENT AERONAUTICAL AUTHORITIES (HEREINAFTER REFERRED TO AS "AUTHORITIES") OF THE EXPORTING STATE CERTIFY THAT A PRODUCT PRODUCED IN THE EXPORTING STATE, OR A PRODUCT PRODUCED IN ANY THIRD STATE AND EXPORTED FROM THE EXPORTING STATE TO THE IMPORTING STATE, COMPLIES EITHER WITH THE APPLICABLE LAWS, REGULATIONS AND REQUIREMENTS OF THE EXPORTING STATE AS WELL AS ANY ADDITIONAL REQUIREMENTS REFERRED TO IN PARAGRAPH 4 BELOW WHICH MAY HAVE BEEN PRESCRIBED BY THE GOVERNMENT OF THE IMPORTING STATE, OR WITH THE APPLICABLE LAWS, REGULATIONS AND REQUIREMENTS OF THE IMPORTING STATE, AS NOTIFIED BY THE GOVERNMENT OF THE IMPORTING STATE AS BEING APPLICABLE IN THE PARTICULAR CASE, THE GOVERNMENT OF THE IMPORTING STATE WILL GIVE THE SAME VALIDITY TO THE CERTIFICATION AS IF THE CERTIFICATION HAD BEEN MADE BY ITS AUTHORITIES IN ACCORDANCE WITH ITS APPLICABLE LAWS, REGULATIONS AND REQUIREMENTS.

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3. (A) IN THE CASE OF A COMPONENT WHICH IS PRODUCED IN THE EXPORTING STATE FOR EXPORT AND USE ON A PRODUCT WHICH IS OR MAY BE CERTIFICATED IN THE IMPORTING STATE, IF THE AUTHORITIES OF THE EXPORTING STATE CERTIFY THAT THE COMPONENT CONFORMS TO THE APPLICABLE DESIGN DATA AND MEETS THE APPLICABLE TEST AND QUALITY CONTROL REQUIREMENTS WHICH HAVE BEEN NOTIFIED BY THE GOVERNMENT OF THE IMPORTING STATE TO THE GOVERNMENT OF THE EXPORTING STATE, THE GOVERNMENT OF THE IMPORTING STATE WILL GIVE THE SAME VALIDITY TO THE CERTIFICATION AS IF THE CERTIFICATION HAD BEEN MADE BY ITS AUTHORITIES IN ACCORDANCE WITH ITS APPLICABLE LAWS, REGULATIONS AND REQUIREMENTS.

(B) THE FOREGOING SUB-PARAGRAPH WILL ONLY APPLY TO THOSE COMPONENTS WHICH ARE PRODUCED BY A MANUFACTURER IN THE EXPORTING STATE PURSUANT TO AN AGREEMENT BETWEEN THAT MANUFACTURER AND THE PRODUCT MANUFACTURER IN THE IMPORTING STATE. FURTHERMORE, IT WILL ONLY APPLY IN THOSE INSTANCES WHERE, IN THE JUDGMENT OF THE GOVERNMENT OF THE IMPORTING STATE, A COMPONENT IS OF SUCH COMPLEXITY THAT DETERMINATION OF CONFORMITY AND QUALITY CONTROL CANNOT READILY BE MADE AT THE

TIME WHEN THE COMPONENT IS ASSEMBLED WITH THE PRODUCTS.

4. THE AUTHORITIES OF THE IMPORTING STATE WILL PROMPTLY ADVISE THE AUTHORITIES OF THE EXPORTING STATE OF ANY ADDITIONAL REQUIREMENTS WHICH THE GOVERNMENT OF THE IMPORTING STATE FINDS NECESSARY TO ENSURE THAT THE PRODUCT MEETS A LEVEL OF SAFETY EQUIVALENT TO THAT PROVIDED BY THE APPLICABLE LAWS, REGULATIONS AND REQUIREMENTS OF THE IMPORTING STATE WHICH WOULD BE EFFECTIVE FOR A SIMILAR PRODUCT PRODUCED IN THE IMPORTING STATE.

5. THE AUTHORITIES OF EACH STATE WILL KEEP THE AUTHORITIES OF THE OTHER STATE FULLY INFORMED OF ALL MANDATORY AIRWORTHINESS MODIFICATIONS AND SPECIAL

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INSPECTIONS WHICH THE FORMER AUTHORITIES DETERMINE ARE NECESSARY IN RESPECT OF PRODUCTS TO WHICH THIS UNDERSTANDING APPLIES.

6. THE AUTHORITIES OF THE EXPORTING STATE WILL, IN RESPECT OF PRODUCTS PRODUCED IN THE EXPORTING STATE ASSIST THE AUTHORITIES OF THE IMPORTING STATE IN DETERMINING WHETHER MAJOR DESIGN CHANGES AND MAJOR REPAIRS MADE UNDER THE CONTROL OF THE AUTHORITIES OF THE IMPORTING STATE COMPLY WITH THE LAWS, REGULATIONS AND REQUIREMENTS OF THE EXPORTING STATE UNDER WHICH THE PRODUCT WAS ORIGINALLY CERTIFICATED.

7. THE AUTHORITIES OF EACH STATE WILL KEEP THE AUTHORITIES OF THE OTHER STATE CURRENTLY INFORMED OF ALL RELEVANT LAWS, REGULATIONS AND REQUIREMENTS OF THE FORMER STATE.

8. IN THE CASE OF CONFLICTING INTERPRETATIONS OF THE LAWS, REGULATIONS OR REQUIREMENTS PERTAINING TO CERTIFICATION UNDER THIS UNDERSTANDING, THE INTERPRETATION OF THE AUTHORITIES OF A STATE WHOSE LAWS REGULATIONS OR REQUIREMENTS ARE BEING INTERPRETED WILL PREVAIL.

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9. FOR THE PURPOSES OF THIS UNDERSTANDING:

(A) "PRODUCTS" MEANS AIRCRAFT, ENGINES, PROPELLERS, APPLIANCES, AND THEIR REPLACEMENT AND MODIFICATION PARTS;

(B) "AIRCRAFT" MEANS CIVIL AIRCRAFT OF ALL CATEGORIES, WHETHER USED IN PUBLIC TRANSPORTATION OR FOR OTHER PURPOSES:

(C) "ENGINES" MEANS ENGINES INTENDED FOR USE IN AIRCRAFT AS DEFINED IN (B);

(D) "PROPELLERS" MEANS PROPELLERS INTENDED FOR USE IN AIRCRAFT AS DEFINED IN (B);

(E) "APPLIANCE" MEANS ANY INSTRUMENT, EQUIPMENT, MECHANISM, APPARATUS OR ACCESSORY USED OR INTENDED TO BE USED IN OPERATING AN AIRCRAFT IN FLIGHT, WHICH IS INSTALLED IN, INTENDED TO BE INSTALLED IN, OR ATTACHED TO THE AIRCRAFT AS DEFINED IN (B), BUT IS NOT PART OF AN AIRFRAME, ENGINE OR PROPELLER;

(F) "COMPONENT" MEANS ANY MATERIAL, PART, OR SUBASSEMBLY NOT COVERED IN (B), (C), (D) OR (E) FOR USE ON CIVIL AIRCRAFT, ENGINES, PROPELLERS OR APPLICANCES;

(G) "PRODUCED IN THE EXPORTING STATE" MEANS THAT THE PRODUCT OR COMPONENT AS A WHOLE IS FABRICATED IN THE EXPORTING STATE, EVEN THOUGH PORTIONS THEREOF MAY HAVE BEEN FABRICATED IN ANY STATE OTHER THAN THAT STATE;

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(H) "APPLICABLE LAWS, REGULATIONS AND REQUIREMENTS" MEANS:

(I) THOSE AIRWORTHINESS LAWS, REGULATIONS AND REQUIREMENTS WHICH ARE EFFECTIVE ON THE DATE WHEN A MANUFACTURER APPLIES FOR CERTIFICATION OF A PRODUCT IN THE IMPORTING STATE, OR

(II) FOR PRODUCTS CURRENTLY IN PRODUCTION, THOSE AIRWORTHINESS LAWS, REGULATIONS AND REQUIREMENTS OF THE EXPORTING STATE WHICH WERE IN FORCE ON THE DATE OF APPLICATION FOR THE ORIGINAL CERTIFICATION OF A PRODUCT IN THE IMPORTING STATE, OR AIRWORTHINESS LAWS, REGULATIONS AND REQUIREMENTS OF THE IMPORTING STATE WHICH WERE APPLICABLE TO SIMILAR PRODUCTS ON THE DATE OF THE ABOVE MENTIONED APPLICATION IN THE EXPORTING STATE, OR

(III) FOR PRODUCTS NO LONGER IN PRODUCTION, SUCH AIRWORTHINESS REQUIREMENTS AS THE AUTHORITIES OF THE IMPORTING STATE FIND ACCEPTABLE IN THE PARTICULAR CASE: AND

(I) "AUTHORITIES" MEANS, IN THE CASE OF JAPAN, THE MINISTRY OF TRANSPORT AND ANY PERSON OR AGENCY AUTHORIZED TO PERFORM THE FUNCTIONS OF THE SAID MINISTRY AND, IN THE CASE OF THE UNITED STATES OF AMERICA, THE DEPARTMENT OF TRANSPORTATION AND ANY PERSON OR AGENCY AUTHORIZED TO PERFORM THE FUNCTIONS OF THE SAID DEPARTMENT.

10. THE AUTHORITIES OF EACH STATE WILL MAKE SUCH MUTUAL ARRANGEMENTS IN RESPECT OF THE OPERATION OF THIS UNDERSTANDING IN ORDER TO ENSURE THAT REDUNDANT CERTIFICATION, TESTING AND ANALYSIS WILL BE AVOIDED.  
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11. NO PROVISION OF THIS UNDERSTANDING WILL BE CONSTRUED SO AS TO RELATE TO NOISE ABATEMENT OR ANTI-POLLUTION REQUIREMENTS.

12. THE PROVISIONS OF THIS UNDERSTANDING WILL BE IMPLEMENTED BY THE GOVERNMENTS OF JAPAN AND OF THE UNITED STATES OF AMERICA IN ACCORDANCE WITH THEIR RESPECTIVE LAWS, REGULATIONS AND REQUIREMENTS.

13. EITHER GOVERNMENT MAY TERMINATE THIS UNDERSTANDING BY GIVING TWO (2) MONTHS' WRITTEN NOTICE OF THAT INTENTION TO THE OTHER GOVERNMENT.

14. THIS UNDERSTANDING WILL TERMINATE AND REPLACE THE AGREEMENT BETWEEN THE TWO GOVERNMENTS FOR THE RECIPROCAL ACCEPTANCE OF CERTIFICATES OF AIRWORTHINESS, EFFECTED BY THE EXCHANGE OF NOTES AT WASHINGTON ON FEBRUARY 1, 1963.

IF THE FOREGOING PROVISIONS ARE ACCEPTABLE TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA, I HAVE THE HONOR TO PROPOSE THAT THIS NOTE AND YOUR EXCELLENCY'S REPLY TO THAT EFFECT SHALL BE REGARDED AS CONSTITUTING AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS, WHICH SHALL

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ENTER INTO FORCE ON THE DATE OF YOUR EXCELLENCY'S REPLY.

ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST CONSIDERATION."

3. PROPOSED U.S. NOTE IN REPLY WOULD READ AS FOLLOWS:  
"EXCELLENCY, I HAVE THE HONOR TO REFER TO YOUR EXCELLENCY'S NOTE OF TODAY'S DATE WHICH READS AS FOLLOWS: (REPEAT TEXT OF SAME)  
END JAPANESE NOTE.

"I HAVE THE HONOR TO CONFIRM YOUR EXCELLENCY THAT THE FOREGOING PROPOSALS OF THE GOVERNMENT OF JAPAN ARE ACCEPTABLE TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THAT YOUR EXCELLENCY'S NOTE AND THIS REPLY ARE CONSIDERED AS CONSTITUTING AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS EFFECTIVE ON THIS DATE.

ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST CONSIDERATION."

4. ACCORDING TO THE ORAL EXPLANATION MADE BY THE MOFA, THE CHANGES IN TEXT WHICH THE GOJ HAS PROPOSED FALL INTO TWO CATEGORIES: 1) THOSE MADE FOR REASONS OF CLARIFICATION AND/OR SIMPLIFICATION AND 2) SUBSTANTIVE CHANGES. FOR EXAMPLE, IN REGARD TO CATEGORY 1 CHANGES, PARA 2 OF THE GOJ DRAFT HAS BEEN SHORTENED TO ELIMINATE REDUNDANCIES. LIMITED OFFICIAL USE

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IN SIMILAR MANNER, PARA 3 HAS BEEN DIVIDED INTO SUBSECTIONS FOR CLARIFICATION.

5. DURING ITS ORAL EXPLANATION, THE MOFA CALLED THE FOLLOWING PROPOSED SUBSTANTIVE CHANGES TO OUR ATTENTION: PARA 4 HAS BEEN MODIFIED TO STIPULATE ONLY THE "ADDITIONAL REQUIREMENTS" FOR CERTIFICATION THAT MAY BE REQUIRED BY THE IMPORTING STATE, IT BEING UNDERSTOOD THAT PARA 2 COVERS THE APPLICABLE LAWS, REGULATIONS, AND REQUIREMENTS ALREADY IN EFFECT; PARA 9 (H) (II) HAS BEEN MODIFIED TO READ THAT THE "LAWS, ETC., OF THE EXPORTING STATE WHICH WERE IN FORCE ON THE DATE OF APPLICATION FOR THE ORIGINAL CERTIFICATION OF A PRODUCT IN THE IMPORTING STATE" SHOULD GOVERN PRODUCTS CURRENTLY IN PRODUCTION; PARA 10 HAS BEEN MODIFIED TO REFER TO MUTUAL ARRANGEMENTS IN RESPECT OF THE "OPERATION" OF THE UNDERSTANDING RATHER THAN "PROCEDURES" WHICH IS FELT TO BE A MORE RESTRICTIVE AND LESS FLEXIBLE TERM.

6. THE GOJ DRAFT ALSO DIFFERS IN THAT THE PROVISION THAT THIS UNDERSTANDING WILL NOT RELATE TO NOISE ABATEMENT OR ANTI-POLLUTION REQUIREMENTS IS INCLUDED WITHIN THE TEXT OF THE UNDERSTANDING (PARA 11) AND IN THAT A PROVISION THAT THE UNDERSTANDING WILL BE IMPLEMENTED BY BOTH GOVERNMENTS IN ACCORDANCE WITH THEIR RESPECTIVE LAWS, REGULATIONS AND REQUIREMENTS IS SET FORTH AS A GENERAL CATCH-ALL AS PARA 12.

7. FOLLOWING THIS ORAL EXPLANATION OF THE DIFFERENCES IN THE GOJ DRAFT, 1ST NA DIVDIR WATANABE EXPRESSED THE "VERY STRONG" WISH THAT THE DRAFT BE FOUND ACCEPTABLE BY THE U.S. HE STATED THAT THE JAPANESE AIRCRAFT INDUSTRY IS "SERIOUSLY CONCERNED" ABOUT THE POSSIBLE DIS- LIMITED OFFICIAL USE

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RUPTION OF ITS EXPORTS TO THE U.S. AND INDICATED THAT THE MOFA HAD "DONE ITS BEST" IN WORKING OUT WHAT IT HOPED WOULD BE AN ACCEPTABLE TEXT.

8. THE MOFA THEN REQUESTED THAT THE FORMAL EXCHANGE OF NOTES CONTAINING THE REVISED BILATERAL TAKE PLACE IN WASHINGTON. IT WAS STATED THAT THE NOTES EFFECTING THE CURRENT AGREEMENT WERE EXCHANGED THERE (FEB 1, 1963) AND, FROM A PRACTICAL STANDPOINT, IT WILL NOT BE NECESSARY FOR THE JAPANESE SIDE TO USE THE JAPANESE LANGUAGE IN ITS NOTE IF THEY ARE EXCHANGED IN WASHINGTON. THE MOFA INDICATED THAT JAPANESE AMB. TOGO WOULD BE AUTHORIZED TO SIGN FOR THE JAPANESE SIDE IN WASHINGTON AND ASKED THAT THE EMBASSY FURNISH THE NAME, TITLE, AND CONFIRMATION OF AUTHORIZATION TO SIGN OF THE DESIGNATED USG SIGNEE. THE MOFA WOULD ALSO NEED TO KNOW THE DATE AND TIME PROPOSED FOR THE ACTUAL SIGNING AND EXCHANGE AND NEEDS THIS ADVICE AT LEAST ONE WEEK IN ADVANCE IN ORDER THAT THE REQUIRED JAPANESE CABINET APPROVAL MAY BE OBTAINED.

9. COMMENT: WE ARE NOT IN A POSITION TO EVALUATE THIS DRAFT TEXT COMPARED TO THE U.S. ONE OF 12/28/73. WE DO BELIEVE, HOWEVER, THAT THE 1ST NA DIVISION HAS DONE THE BEST JOB IT COULD IN STEERING THE DRAFT THROUGH THE JAPANESE BUREAUCRACY. IF AN EXCHANGE OF NOTES INCORPORATING A NEW AGREEMENT IS NOT POSSIBLE BY THE OCTOBER 1 DEADLINE, THE EMBASSY AND LOCAL FAA OFFICE RECOMMENT THAT SFAR 26 AGAIN BE EXTENDED ON AN INTERIM BASIS.  
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## Message Attributes

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